Supreme Court, U.S.
FILED

(1)

961825 SEP 17 1996

No.

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1996

LILLIE M. BODDIE

Petitioner,

v.

THE UNITED STATES

Respondent.

On Petition of Writ of Certiorari
To The United States Court of Appeals
For the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

Lillie M. Bodie
Pro se
1709 Nassau Boulevard
Florence, Alabama 35630
(205) 766-0902

24 pp

QUESTIONS PRESENTED

Prior to the U.S. Army, I had become one of only a handful of Negro students to first integrate the all-white county high school in Lauderdale County, Alabama, along with my brothers, but later we transferred to the city's only black high school where I graduated. Then, I attended a junior college in Alabama and the University of North Alabama in my native town before transferring to Northeastern University in Boston, Massachusetts. My first full-time job was during the summer as a student with Six Flags over Georgia and my last full-time job was at night with the headquarters of an insurance company in Boston while I attended Northeastern University full-time. I had never been arrested, had a ticket, or seen a jail cell or courtroom, or had any disciplinary actions taken against me in school.

But I did have problems with my white male English teacher in 1966, I was assaulted by another white male in Atlanta, Georgia, later, and later constuperated by a black male U.S. Army sergeant at age twenty in my native town; and none of these were reported to the authorities.

When I entered the Army, I was given extra rank because I had more than two years of college credits, but that was all; I never received a promotion during my stay in the Army. I made it through the physical training and completed the finance training in the 90-range. I never missed a day of work from 7:30 a.m. to 4 p.m. It was the time after 4 p.m. and the time on Saturdays and Sundays that became the object of scrutiny, and the fact that I refused my first article 15 and chose to go to a court-martial; before that there were only reports by me of attacks made against me. After speaking to the Army's defense attorney and mentioning that my oldest brother was a prosecutor with the Marines, he called my brother. And from then on, my brother was in charge of my defense. Two days before my trial, he told me that the maximum I could get was six months in prison. Only minutes before my trial begin, my brother informed me as we sat before the judge and jury that I would not be testifying. And after the trial and before the

sentencing , the Army's defense attorney told me the exact words to say on the stand.

Was the refusal to allow me to testify at my own trial a serious violation of my substantial due process and the First and Sixth Amendments' rights?

Was the act of the court-martial officials by allowing my brother to defend me placing me under duress, under undue influence, or in violation of a fiduciary duty and the Fifth Amendment?

And was the discharge I was given more or less a constructive discharge and in violation of the Eighth, Thirtheenth, and Fourteenth Amendments' rights when I was given forty-five days extra duty, ordered to have $250 for two months withdrawn from my pay and $149 withdrawn for one month, and reduced to E-1 in rank while also being classified as a paranoid schizophrenic?

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Petitioner Lillie M. Boddie respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Federal Circuit denying me jurisdiction for the violation of my United States constitutional rights by stating that my claim is a civil rights claim grounded in tort when I personally with intent filed my claim under a contract claim.

OPINIONS

The opinions of the Court of Appeals and of the Court of Federal Claims are attached to the Writ of Certiorari.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed May 14, 1996. A timely Petition for Rehearing was filed. The Court of Appeals' denial of the Petition for Rehearing was issued on June 21, 1996. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments I, V, VI, VIII, XIII, and XIV to the United States Constitution are involved. Statutes 28 U.S.C. § 1254, 28 U.S.C. § 1346 (a)(2), 1491, and 41 U.S.C. § 601 et. seq. Also, statutes 28 U.S.C. § 1343; 29 U.S.C. § 701 et. seq.; 42 U.S.C. § 1981, 1983, and 1985.

STATEMENT OF THE CASE

The United States Court of Federal claims of Washington,

D.C., had jurisdiction pursuant to Titles 28 U.S.C. § 1346 (a) (2), 1491 and 41 U.S.C. § 601 et. seq.

On June 23, 1995, I filed a complaint with the Court of Federal Claims as a contract claim because of the contract that I was under while serving in the United States Army. On December 18, 1995, the Court of Federal Claims dismissed my claim for lack of jurisdiction citing that my claim is a civil rights claim of which the district court has exclusive jurisdiction and citing that my claim was a cause of action sounding in tort. A timely appeal was made to the Court of Appeals for the Federal Circuit. And the Federal Circuit Court affirmed the Court of Federal Claims decision on May 14, 1996, but on an alternative ground that I failed to state a claim upon which relief may be granted. A timely petition for a rehearing was also filed, and was denied on June 21, 1996.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for four reasons: This Petition presents an issue of the constitutional rights of U.S. Service Personnel; of whether or not my claim is of one of a contract claim of constructive discharge or of one of a tort claim; of whether or not the Fifth Amendment's taking clause can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained; and of whether or not the Rules of the Federal Claims Court should be mailed to a plaintiff before the plaintiff has filed his complaint or after the plaintiff has filed his complaint.

The civil rights statutes mentioned in my claim were only to amplify rights presumably already included in the violations of the constitutional rights. The Claims Court and the Appeals Court miscontrued my claims as one of civil rights and of tort when, in fact, it is a trespass of contract, trespass to person, and now a trespass on case. In another case, it was stated:

> A complaint that could be construed as being either in tort or in contract may be presumed to be in contract whenever the action would be barred by the statute of limitations if construed as being in tort. Shanholtz v Monongahela Pwr Co 270 SE2nd 178 (W Va 1980).

Title 28 U.S.C. § 1343 states that the district courts should have original jurisdiction of civil actions, not exclusive.

And in applying the Fifth Amendment's taking clause to a coantract claim presumably it would mandate compensation for damage.

But most of all, the Supreme Court of the United States should review my case, too, based upon the following grounds:

(1) The Alabama Supreme Court has refused my case under 28 U.S.C. § 1343, 29 U.S.C. § 701 et. seq., 42 U.S.C. § 1981, 1983,

and 1985 that is closely related to the cause of action in this case which is an abuse of discretion and an error of law[1]. Therefore, this Court should issue a writ of error to the state court system of Alabama to send up my records for a review and to send up the application for a rehearing and briefs which were returned to me for untimely as a matter of equity.

(2) There are issues concerning the humanitarian and chilling effect doctrines called into question in relation to my substantive due process in how the Alabama Judicial System has adjudicated in reference to my case. Bad faith and wanton acts have been exhibited from the judges in how they totally ignored and defied the arbitrary and capricious acts of the officials of the Alabama Department of Education, the Alabama Department of Veterans' Affairs, the Alabama Department of Health and Human Services, and the Riverbend Center for Mental Health of Florence, Alabama.

And as a result of their acts, I have been deprived of my First, Fifth, Sixth, Eighth, Thirteenth, and Fourteenth Amendments' rights: The U.S. Army improperly or wrongfully, discharged me by not abiding by its own rules and regulations according to 32 CFR, 41, Appendix A, part 1-3 of the Office of the Secretary of Defense. And so did the Department of Veterans Affairs too according to 38 CFR 4.125-end. In addition, the procedures, rules, and regulations of the others were so ambiguous, filled with obliquities, vague, and obnubilated, that I was left in a state of ambivalence and a state of being in a maze.

The inconsistencies of these agencies' statements on my mental status, or state, have left both my mental state and my life in

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[1]Fitzpatrick v. Bitzer, 1976. 96 S. Ct. 2666, 445, 49 L. Ed. 2d 614.

Powers v. U.S., 1988, 15 Cl. Ct. 702.

Roberts V. United States Jaycees, 468 U.S. at 624, 104 S. Ct. at 3253.

Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan, D.C.. Tex. 1981, 518 F. Supp. 993.

limbo without any kind of job-rehabilitation. The State itself has labeled me: These agencies branded me with a paraniod schizophrenic mental disorder. But the dmages which I have had to endure as a result of these agencies' acts until today and which I have stated on my original complaint and amended complaint are oppressiveness, procrastination, lack of concentration, emotional distress, shame, and a damage to my safety and my creditibility.

CONCLUSION

WHEREFORE, the Petitioner respectfully prays that this Court will grant me a review on humanitarian grounds.

Respectfully submitted this 9th day of May, 1997.

L.M.B.

Lillie M. Bodie
Pro se
1709 Nassau Boulevard
Florence, Alabama 35630
(205) 766-0902

APPENDIX A

United States Court of Appeals for the Federal Circuit

ORDER

A combined petition for rehearing and suggestion for rehearing in banc having been filed by the APPELLANT, and the petition for rehearing having been referred to the panel that heard the appeal, and thereafter the suggestion for rehearing in banc having been referred to the circuit judges who are in regular active service,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED and it is further

ORDERED that the suggestion for rehearing in banc be, and the same hereby is, DECLINED.

The mandate of the court will issue on July 5, 1996 unless another time becomes appropriate uinder Rule 41.

FOR THE COURT,
FRANCIS X. GINDHART, CLERK

Dated: June 21, 1996

By _____
Brian P. LeDuc
Associate Chief Deputy Clerk

CC: LILLIE M. BODDIE
PAUL S. PADDA

BODDIE V US, 96-5060
(CFC - 95-417C)

Note: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is public record.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FEDERAL COURT

NOTICE OF ENTRY OF JUDGMENT ACCOMPANIED BY OPINION

OPINION FILED AND JUDGMENT ENTERED: 05/14/96

The attached opinion annoucing the judgment of the court in your case was filed and judgment was entered on the date indicated above. The mandate will be issued in due course.

Information is also provided about petitions for rehearing and suggestions for rehearing in banc. The questions and answers are those frequently asked and asnwered by the Clerk's Office.

Costs are taxed against the Appellant(s) in favor of the Appellee(s) under Rule 39. The party entitled to costs is provided a bill of costs form and instruction sheet with this notice.

The parties are encouraged to stipulate to the costs. A bill of costs will be presumed correct in the absence of a timely filed objection.

Costs are payable to the party awarded costs. If costs are awarded to the government, they should be paid to the Treasurer of the United States. Where costs are awarded aginst the government, payment should be made to the person(s) designated under the governing statutes, the court's orders, and the parties' written settlement agreements. In cases between private parties, payment should be made to counsel for the party awarded costs or, if the party is not represented by counsel, to the party pro se. Payment of costs sould not be sent to the court. Costs should be paid promptly.

If the court also imposed monetary sanctions, they are payable to the opposing party unless the court's opinion provides otherwise. Sanctions

should be paid in the same way as costs.

Exhibits and visual aids shall be promptly retrieved by the party that lodged them with this court.

FRANCIS X. GINDHART
Clerk

cc: LILLIE M. BODDIE
PAUL S. PADDA

BODDIE V US, 96-5060
CFC - 95-417C

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

APPENDIX C

United States Court of Appeals for the Federal Circuit

96-5060

LILLIE M. BODDIE,

Plantiff-Appellant

v.

THE UNITED STATES,

Defendant-Appellee.

Judgment

ON APPEAL from the United States Court of Federal Claims

in CASE NO(S). 95-417C

This CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

AFFIRMED.

ENTERED BY ORDER OF THE COURT

DATED MAY 14, 1996

Francis X. Gindhart, Clerk

ISSUED AS A MANDATE: JULY 5, 1996

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE FEDERAL COURT

96-5060

LILLIE M. BODDIE,

Plantiff-Appellant

UNITED STATES,

Defendant-Appellee.

Appendix D

DECIDED: May 14, 1996

Before PLAGER, Circuit Judge, FRIEDMAN, Senior Circuit Judge, and SCHALL, Circuit Judge.

PER CURIAM.

DECISION

The decision of the United States Court of Federal Claims, which dismissed for lack of jurisdiction the petitioner Lillie M. Boddie's complaint seeking damages for the United States Army's alleged mistreatment of her, is affirmed.

OPINION

I.

According to her complaint, Ms. Boddie suffered two assaults as a young woman, including a rape by a sergeant in the United States Army. Later Ms. Boddie herself joined the Army, and she alleges that certain officers failed to give proper consideration to psychological difficulties she faced as a result of the assaults. Furthermore, she contends she was court-martialed unfairly and that since her discharge from the Army, she has not received proper veterans' benefits. She seeks damages of $24 million and other relief.

Ms. Boddie cites the Tucker Act, 28 U.S.C. § 1491 (a)(1) (1994), the Back Pay Act, § 5 U.S.C. § 5596 (1994), and the Contract Disputes Act, 41 U.S.C. §§ 601-613 (1994), as giving the Court of Federal Claims jurisdiction over her complaint. She cites Title VII of the Civil Rights Act, 42 U.S.C., §§ 2000e to 2000e-17 (1994), the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 (1994), and several amendments to the Constitution as entitling her to monetary compensation.

Appendix D

Construing her claims liberally because she acted pro se, the Court of Federal Claims concluded that it lacked jurisdiction over Ms. Boddie's claims. We affirm, but on the alternative ground that she failed to state a claim upon which relief may be granted.

II

Of the three statutes Ms. Boddie cites as creating jurisdiction in the Court of Federal Claims, only one applies. The Back Pay Act is not a jurisdictional statute. See Spagnola v. Stockman, 732 F. 2d 908, 912 (Fed. Cir. 1984); United States v. Connolly, 716 F. 2d 882, 887 (Fed. Cir. 1983) cert. denied, 465 U.S. 1065 (1984). The Contract Disputes Act is not applicable to Ms. Boddie's claim, which does not deal with a government contract.

The Tucker Act does confer jurisdiction on the Court of Federal Claims, but "it does not create any substantive right enforceable against the United States for money damages." United States v. Testan, 424 U.S. 392, 398 (1976). As a result, to state a claim upon which relief may be granted, Ms. Boddie would have had to invoke another statute or constitutional provision that "can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained." Eastport S.S. Corp. v. United States, 372 F. 2d 1002, 1009 (Ct. Cl. 1967).

Neither the Americans with Disabilities Act nor the Civil Rights Act so mandates compensation. The Americans with Disabilities Act does not cover the federal government. See 42 U.S.C. §§ 12111(2), (5), 12112 (1994). The Court of Federal Claims has no authority to award relief under the Civil Rights Act, since the United States District Courts have exclusive jurisdiction over claims under that act. See Bunch v. United States, 33 Fed. Cl. 337, 341, (1995), aff'd, 78 F. 3d 605 (Fed. Cir. 1996).

None of the constitutional amendments Ms. Boddie invokes "contain[s] language which could fairly be interpreted as mandating

recovery of compensation from the government." Cummings v. United States, 17 Cl. Ct. 475, 479 (1989), aff'd 904 F. 2d 45 (Fed. Cir. 1990). Accordingly, Ms. Boddie has not stated a claim upon which the Court of Federal Claims could grant relief, and that court correctly dismissed her complaint.

APPENDIX E

In The United States Court of Federal Claims

No. 95-417 C

LILLIE M. BODDIE,

v. **JUDGMENT**

THE UNITED STATES

FILED DEC 18 1995

Pursuant to the court's order of December 7, 1995,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that the complaint is dismissed for lack of jurisdiction. No costs.

David A. Lampen
Clerk of Court

December 18, 1995 By:

Deputy Clerk

NOTE: As to appeal, 60 days from this date, see RCFC 72, re number of copies and listing of all plaintiffs. Filing fee is $105.00

APPENDIX F

In The United States Court of Federal Claims

FILED
DEC 7 1995
U.S. COURT OF
FEDERAL CLAIMS

THIS ORDER WILL NOT BE PUBLISHED IN THE UNITED STATES COURT OF FEDERAL CLAIMS REPORTER BECAUSE IT DOES NOT ADD SIGNIFICANTLY TO THE BODY OF LAW AND IS NOT OF WIDESPREAD INTEREST.

No. 95-417C

FILED: December 7, 1995

LILLIE M. BODDIE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

Jurisdiction Tucker Act, 28 U.S.C. § 1491; Back Pay Act, 5 U.S.C. § 5596; Title VII, Civil Rights Act; Gender Discrimination; Age Discrimination; Sexual Harassment.

ORDER

On June 23, 1995, the pro se plaintiff in the above-captioned case, Lillie M. Boddie, filed a complaint in this court against the Secretary of the Army and the Secretary of the Department of Veterans Affairs, based largely on Title VII of the Civil Rights Act, 42 U.S.C. § 1981 et seq. (1988). She asserts the following authority in support of her claim:

MANDATING AUTHORITY OR STATUTE: Title VII of the Civil Rights Act for sexual harassment in the form of 'hostile work environment and nepotism & favoritism,' sex discrimination, age discrimination 29 U.S.C.S. 626 (b) [sic], and Americans with Disabilities Act 42 U.S.C.S.

Appendix F

12117 (a) [sic]. The claim is under this statute for violating my Fourteenth Amendment, equal protection of the laws; Ninth Amendment, deny or disparage others retained by the people; Eight Amendment, cruel and unusual punishment; Sixth Amendment, trial by impartial jury; and Fifth Amendment Rights, due process of law, the right to be heard in my own defense.

Plaintiff Claims:

> JURISDICTION: under both the Tucker tortious' breach of contractual obligation/Back Pay Act and the Contract Disputes Act. Also under the Breach of Trust of the Tucker Act.

For relief, plaintiff seeks the following:

> Rescission of my discharge and back pay; Declaratory relief and Equitable and extraordinary relief and other relief 28 U.S.C. 1491 (a)(2)(3), in the form of front pay, correction of records as well as promotions had alleged discrimination not occurred; Compensatory and Punitive, or liquidated, damages and attorney's fees and costs, Equal Access to Justice Act 5 U.S.C.A. 504 and 28 U.S.C.A. 2412; Hedonic damages, Mitigation of damages, Prospective damages, Future damages, Nominal damages, General damages, and Direct damages in the sum of $24,000,000.
>
> In additional, Permanent injunctive relief to remove all obstacles to my future employment like test, experience, and ratings, etc. And grant full protection of all Consti - tutional, civil, and moral freedoms to me, my family, partners, friends, and associates from retaliation, disparaging treatment, and economic duress.

Appendix F

Even construing plaintiff's claims liberally, since she is proceeding pro se, plaintiff fails to articulate sufficiently a claim upon which relief can be granted. See Estelle v. Gamble, 429 U.S. 97, 106 (1976); Haines v. Kerner, 404 U.S. 519, 520-21 (1972). Among the allegations raised, plaintiff alleges claims under the Civil Rights Act of 1964, 42 U.S.C. § 1981 et seq., claims under the Back Pay Act, 5 U.S.C. § 5596 (1988), and claims sounding in tort. All of these claims suffer from a potential jurisdictional defect.

In order for this court to have jurisdiction, the Tucker Act, 28 U.S.C. § 1491, requires that a substantive right must exist which is enforceable against the United States for money damages, independent of 28 U.S.C. § 1491. The Tucker Act merely confers jurisdiction on the Court of Federal Claims; it does not create any substantive right enforceable against the United States for money damages. United States v. Mitchell, 445 U.S. 535, 538 (1980) (Mitchell 1); United States v. Testan, 424 U.S. 392, 398-99 (1976); United States v Connolly, 716 F. 2d 882, 885 (Fed. Cir. 1983)(en banc), cert. denied, 465 U.S. 1065 (1984).

The Tucker Act permits actions against the United States government founded upon the Constitution, and Act of Congress, a regulation of an executive department, or upon any express or implied contract with the United States. The Tucker Act provides:

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States,

or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1).

A waiver of the traditional sovereign immunity "cannot be implied but, must be unequivocally expressed." United States v. King, 395 U.S. 1, 4 (1969). The individual claimants, therefore, must look beyond the jurisdictional statute for a waiver of sovereign immunity. United States v. Testan, 424 U.S. at 398. Stated otherwise, "in order for a claim against the United States founded on statute or regulation to be successful, the provisions relied upon must contain language which could fairly be interpreted as mandating recovery of compensation from the government." Cummings v. United States, 17 Cl. Ct. 475, 479, (1989), aff'd, 904 F. 2d 45 (Fed. Cir. 1990); see also United States v. Mitchell, 463 U.S. 206, 216-17 (1983) (Mitchell II) (citing United States v. Testan, 424 U.S. at 400, (quoting Eastport Steamship Corp. v. United States, 178 Ct. Cl. 599, 607, 372, F. 2d 1002, 1009 (1967); Duncan V. United States, 229 Ct. Cl. 120, 138, 667, F 2d 36, 47 (1981), cert. denied, 463 U.S. 1228 (1983).

Plaintiff's complaint asserts that this court has jurisdiction pursuant to the Back Pay Act, 5 U.S.C. § 5596. The Back Pay Act, however, like the Tucker Act, does not create a substantive right enforceable against the United States for money damages. The United States Court of Appeals for the Federal Circuit has explicitly held that the Back Pay Act, alone, does not grant this court jurisdiction over civilian pay cases. The Federal Circuit in Spagnola v. Stockman,732 F. 2d 908, 912 (Fed Cir. 1984), stated as follows:

> The overall answer is that the Back Pay Act is merely derivative in application; it is not itself a jurisdictional statute. United States v. Connolly, 716 F. 2d 882, 887 (Fed. Cir. 1983). Unless some other provision of law

> commands payment of money to the employee for the unjustified or unwarranted personnel action, the Back Pay Act is inapplicable.

Spagnola v Stockman, 732 F. 2d at 912. Therefore, absent another federal authority which commands payment of money to an employee, this court does not have jurisdiction, Spagnola v. Stockman, 732 F. 2d at 912; United States v. Connolly, 716 F. 2d 882, 887 (Fed. Cir. 1983), cert. denied, 465 U.S. 1065 (1984); Montalvo v. United States, 231 Ct. Cl. 980, 982 (1982).

In the instant case, the federal authority upon which this plaintiff principally relies is Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981.[1] That substantive federal authority, however, does not provide this court with jurisdiction under either the Tucker Act, 28 U.S.C. § 1491, or the Back Pay Act, 5 U.S.C. § 5966. Plaintiff's complaint alleges that the defendants, the Army and Department of Veteran's Affairs, discriminated against her based upon gender and age, and sexually harassed her. Specifically, plaintiff claims that the Army failed to protect her from repeated assaults against her and, further, was negligent in failing to command that plaintiff consult a female psychologist. Plaintiff contends that the Army demonstrated "disparate treatment by treating [plaintiff] like a man" when they commanded plaintiff to see a male counselor instead of a female counselor. Plaintiff alleges that such actions by the defendants amount to discrimination under the Civil Rights Act.

Congress has declared that the United States District

[1]In plaintiff's's complaint, she also makes one reference to the Americans with Disabilities Act, however, she miscites the act and does not discuss this act in her complaint thereafter.

Appendix F

Courts shall have exclusive jurisdiction over claims based upon the Civil Rights Act, 28 U.S.C. § 1343. In Bunch v. United States, 33 Fed. Cl. 337, 341 (1995), the court noted the following:

> Section 1343, in pertinent part, grants original jurisdiction to the district courts over civil actions brought "[t]o recover damages or to secure equitable or other relief under an Act of Congress providing for the protection of civil rights." 28 U.S.C. § 1343(a)(4). Thus, a claim premised on a violation of Title VII must be brought in district court, not the Court of Federal Claims, (citations omitted). Any attempt by this court to resolve plaintiff's discrimination claim would contravene the clear intent of the above statute.

Bunch v. United States, 33 Fed. Cl. at 341.

In a case dealing with the same statutes as the instant case, the court in Anderson v. United States, 22 Cl. Ct. 179 (1990), aff'd without op., 937 F. 2d 623 (1991), wrote:

> Plaintiff in his jurisdictional statement relies on 28 U.S.C. § 1491 and 5 U.S.C. § 5596 for reinstatement and back pay and allowances claims, and the "Civil Rights Act of 1964," 42 U.S.C. § 1983 (Civil Action for deprivation of rights), § 1985(3)(Conspiracy to interfere with civil rights) and § 1986 (Action for neglect to prevent civil rights violations) for his damage claims. While this court has jurisdiction in military pay cases seeking reinstatement, back pay and allowances generally, under 28 U.S.C. § 1491, it has no jurisdiction over cases arising under the Civil Rights Act. Jurisdiction over such cases re-

> sides in the district courts relative to violations of any provision of the Civil Rights Act. (citations omitted).

Anderson v. United States, 22 Cl. Ct. at 179 n.2.

It is well settled in this court, as well as this court's predecessor, the United States Court of Claims, that there is no jurisdiction to entertain an action under Title VII of the Civil Rights Act, for either gender discrimination or age discrimination. Brown v. General Servs. Admin., 425 U.S. 820. 96 S. Ct. 1961, 48 L. Ed. 2d 402 (1976); Dixon v. United States, 17 Cl. Ct. 73, 77 (1989). The court, in Dixon v. United States, states the following:

> This court has held that it does not possess jurisdiction with respect to back pay claims in cases involving discrimination based on sex or handicap, Jackson v. United States, 10 Cl. Ct. 691 (1986), and the Court of Claims held that there is no Tucker Act jurisdiction to entertain claims involving age discrimination. Parker v. United States, 230 Ct. Cl. 974 (1982).

Dixon v. United States, 17 Cl. Ct. at 77. Consequently, it is clear that actions based on alleged discrimination, pursuant to the Civil Rights Act, are properly brought in the district courts and not the Court of Federal Claims. Jackson v. United States, 10 Cl. Ct. 691, 694 (1986)(citing 42 U.S.C. § § 2000e-16(c), 2000e-5(f)(3); 29 U.S.C. § 794a(a)(1); See Brown v. General Services Administration, 425 U.S. 820, 96 S. Ct. 1961, 48 L. Ed. 2d 402 (1976); Williams v. United States, 212 Ct. Cl. 544 (1976). Moreover, Title VII is the comprehensive, exclusive and preemptive remedy for federal employees alleging dis-

crimination. Brown v. General Servs. Admin., 425 U.S. 820; Montalvo v. United States, 17 Cl. Ct. 744, 748 (1989).

Finally, regarding plaintiff's claim of sexual harassment, this claim also is not within the jurisdiction of this court, as clearly stated in 28 U.S.C. § 1491, because it raises a cause of action sounding in tort. In plaintiff's complaint, she alleges "sexual harassment in the form of hostile work environment and nepotism & favoritism. . ." Plaintiff's request for damages to compensate for sexual harassment clearly amounts to a request for tort damages. Gary v. Long, 59 F. 3d 1391 (D.C. Cir. 1995); Clarke v. Kentucky Fried Chicken of California, Inc., 57 F. 3d 21 (1st Cir. 1995). The Tucker Act is explicit in withholding any consent by this court to be sued for damages sounding in tort. 28 U.S.C. § 1491; Martin v. United States, 230 Ct. Cl. 887, 889 (1982); Algonac Manufacturing Co. v. United States, 192 Ct. Cl. 649, 663, 428, F. 2d 1241 (1970); Avala v. United States, 16 Cl. Ct. 1, 4 (1988).

After a thorough review of this pro se plaintiff's complaint, even construed liberally, this court concludes that it does not possess jurisdiction to review the merits of plaintiff's claims for relief. While this court does have jurisdiction to adjudicate military pay cases seeking reinstatement, back pay and allowances, under 28 U.S.C. § 1491, it does not have jurisdiction to rule on cases based on discrimination, pursuant to the Civil Rights Act of 1964, 42 U.S.C. § 1981 et seq. This court also lacks jurisdiction to hear claims for discrimination pursuant to the Tucker Act, 28 U.S.C. § 1491, and the Back Pay Act, 5 U.S.C. § 5966. Moreover, plaintiff's claims for sexual harassment are claims sounding in tort, clearly outside of this court's jurisdiction, pursuant to 28 U.S.C. § 1491, and are insufficient in and of themselves to establish jurisdiction in this court. There-

fore, in accordance with Rule 12(b) of the Rules of the United States Court of Federal Claims, plaintiff's complaint is, hereby, DISMISSED.

IT IS SO ORDERED.

MARIAN BLANK HORN
JUDGE